

DAVID C. BAUM, OSB No. 750288
E-mail: david@bselaw.com
BRENT H. SMITH, OSB No. 065971
E-mail: brent@bselaw.com
Baum Smith & Eyre, LLC
1902 Fourth Street Ste 1
PO Box 967
La Grande, Oregon 97850
Telephone: (541) 963-3104
Facsimile: (541) 963-9254
Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PENDLETON DIVISION

UNITED STATES OF AMERICA,

Case No. CV 11-823-SU

Plaintiff,

DEFENDANTS' ANSWER
AND AFFIRMATIVE DEFENSES

v.

(JURY TRIAL DEMANDED)

HAMMOND RANCHES, INC., an Oregon
Corporation, DWIGHT HAMMOND,
STEVEN HAMMOND,

Defendants.

In response to plaintiff's Complaint, defendants Hammond Ranches, Inc., Dwight
Hammond and Steven Hammond admit, deny and allege as follows:

1. Defendants ADMIT that the United States of America is the plaintiff. The balance of the allegations of paragraph 1 are legal assertions to which no response is required; to the extent a response is required, it is DENIED. Defendants deny all allegations in plaintiffs complaint except as expressly admitted herein.

2. Defendants ADMIT the first sentence of paragraph 2. The second sentence of paragraph 2 is a legal assertion to which no response is required; to the extent a response is required, it is DENIED.

3. Defendants ADMIT paragraph 3.

4. Defendants ADMIT, as alleged in paragraph 4, that Hammond Ranches, Inc. owns real property in Harney County, Oregon and that Hammond Ranches operates a cattle ranch and holds grazing permits issued by the BLM that allows access to and use of certain public lands for livestock grazing.

Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraph 4 while at the same time protecting their constitutional rights to, among other things, remain silent and

not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraph 4; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraph 4 following resolution of the criminal case.

5. Defendants ADMIT paragraph 5.

6 – 13. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 6-13 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 6-13; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 6-13 following resolution of the criminal case.

14. Defendants incorporate by reference their responses to paragraphs 1 through 13.

15 – 17. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 15-17 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 15-17; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 15-17 following resolution of the criminal case.

18. Defendants incorporate by reference their responses to paragraphs 1 through 13.

19 – 21. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 19-21 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 19-21; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 19-21 following resolution of the criminal case.

22. Defendants incorporate by reference their responses to paragraphs 1 through 13.

23 – 25. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and*

Dwight Lincoln Hammond, Jr., United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 23-25 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 23-25; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 23-25 following resolution of the criminal case.

26. Defendants incorporate by reference their responses to paragraphs 1 through 13.

27 – 29. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel

defendants to further respond to the balance of the allegations of paragraphs 27-29 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 27-29; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 27-29 following resolution of the criminal case.

30. Defendants incorporate by reference their responses to paragraphs 1 through 13.

31 – 34. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 31-34 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution,

defendants at this time decline to respond to the balance of the allegations of paragraphs 31-34; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 31-34 following resolution of the criminal case.

35. Defendants incorporate by reference their responses to paragraphs 1 through 13.

36 – 39. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 36-39 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 36-39; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 36-39 following resolution of the criminal case.

40. Defendants incorporate by reference their responses to paragraphs 1 through 13.

41 – 44. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 41-44 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 41-44; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 41-44 following resolution of the criminal case.

45. Defendants incorporate by reference their responses to paragraphs 1 through 13.

46 – 49. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 46-49 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 46-49; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 46-49 following resolution of the criminal case.

50. Defendants incorporate by reference their responses to paragraphs 1 through 13.

51 – 54. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and*

Dwight Lincoln Hammond, Jr., United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel defendants to further respond to the balance of the allegations of paragraphs 51-54 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 51-54; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 51-54 following resolution of the criminal case.

55. Defendants incorporate by reference their responses to paragraphs 1 through 13.

56 – 60. Defendants Dwight Hammond and Steven Hammond are currently under indictment in the case commonly known as *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, United States District Court Case No. CR 10-60066-HO [hereafter “the criminal case”] arising out of facts in common with this action. Being aware that voluntary disclosure of otherwise privileged information may be deemed a waiver of privilege and further understanding that procedures exist by which plaintiff can compel

defendants to further respond to the balance of the allegations of paragraphs 56-60 while at the same time protecting their constitutional rights to, among other things, remain silent and not communicate anything that could be used against them in a criminal prosecution, defendants at this time decline to respond to the balance of the allegations of paragraphs 56-60; to the extent a response is required, they are DENIED.

Defendants specifically reserve the right to file an amended answer further responding to the balance of the allegations of paragraphs 56-60 following resolution of the criminal case.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. Some or all of the claims against defendants fail to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

(Contributory Negligence)

2. The plaintiff through its own negligence contributed to any harm it allegedly suffered.

THIRD AFFIRMATIVE DEFENSE

(Farming Practice)

3. To the extent plaintiffs' trespass claims are (1) based on defendants' farming practices as defined in ORS 30.930 and (2) seek damages for something other than damages to commercial agricultural products defendants are immune from suit and due their reasonable attorneys fees pursuant to ORS 30.938.

WHEREFORE, having fully answered plaintiff's Complaint, defendants pray that plaintiff's Complaint be dismissed and that defendants be awarded their costs, disbursements and reasonable attorney fees incurred herein.

Dated this 23rd day of September, 2011.

Respectfully submitted,

BAUM SMITH & EYRE LLC
Attorneys for Defendants

By: /Brent H. Smith
Brent H. Smith
OSB No. 065971